

**Summit Mechanical Contractors, Inc. and Patrick E. Henehan.** Case 17-CA-16697

March 9, 1995

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND BROWNING

On August 31, 1993, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> *inter alia*, ordering Summit Mechanical Contractors, Inc., to offer reinstatement to employee Patrick Henehan and make him whole for any loss of earnings or benefits he may have suffered as a result of his discriminatory discharge in violation of the National Labor Relations Act. On December 3, 1993, the United States Court of Appeals for the Tenth Circuit entered a judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatee, on December 9, 1994, the Regional Director for Region 17 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.<sup>2</sup>

By letter dated January 13, 1995, counsel for the General Counsel advised the Respondent and its counsel that no answer to the compliance specification had been received and that unless an appropriate answer was filed by close of business on January 20, 1995, summary judgment would be sought. The Respondent filed no answer.

On February 14, 1995, the General Counsel filed with the Board a Motion to Transfer Proceeding to the Board and for Summary Judgment, with exhibits attached. On February 16, 1995, the Board issued an order transferring the proceeding to the Board and a

Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment.

Accordingly, we conclude that the unpaid wages and backpay due Patrick Henehan is as stated in the compliance specification and we will order payment by the Respondent of the amounts to him, plus interest accrued on the amounts to the date of payment.

**ORDER**

The National Labor Relations Board orders that the Respondent, Summit Mechanical Contractors, Inc., Lenexa, Kansas, its officers, agents, successors, and assigns, shall make whole the individual named below, by paying him the amounts following his name, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and state laws:

*Patrick Henehan*

Unpaid Wages	\$178.13
Backpay	3,084.00

<sup>1</sup> 312 NLRB No. 6 (not reported in Board volumes).

<sup>2</sup> A copy of the compliance specification was sent to the Respondent's counsel by certified mail and to the Respondent's last known address by regular mail. The Respondent's counsel received the compliance specification, but the Respondent's copy was returned with a label stating "Moved - Left No Address - Unable to Forward - Return to Sender." We find service sufficient in these circumstances. It is well established that the failure to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *National Automatic Sprinklers*, 307 NLRB 481 fn. 1 (1992); and *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).